

REDACTED VERSION

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

SPACE EXPLORATION)
TECHNOLOGIES CORP.,)
Plaintiff,)
v.)
THE UNITED STATES,)
Defendant,)
and)
UNITED LAUNCH SERVICES, LLC,)
Defendant-Intervenor.)

)
Case No. 1:14-cv-00354-SGB
Judge Susan G. Braden
[REDACTED]

**CHRONOLOGY IN SUPPORT OF UNITED LAUNCH SERVICES, LLC's
MOTION TO DISMISS FOR LACK OF JURISDICTION (EXHIBIT A)**

- 1995 The Department of Defense awards contracts to four companies to begin preliminary designs for evolved expendable launch vehicles, beginning the EELV program. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-641, EVOLVED EXPENDABLE LAUNCH VEHICLE, DOD NEEDS TO ENSURE NEW ACQUISITION STRATEGY IS BASED ON SUFFICIENT INFORMATION 2 (Sept. 2011), App. 142.

Oct. 28, 2005 Court dismisses SpaceX's previous bid protest pertaining to the EELV program, *Space Exploration Techs. Corp. v. United States*, 68 Fed. Cl. 1 (2005), ruling that SpaceX was not an actual or prospective bidder with a

direct economic interest in the program. In its filings, SpaceX claimed that it anticipated having “full EELV launch capability by 2007.” *Id.* at 4.

May 6, 2011 EELV Block Buy Request for Information (“RFI”) posted on FedBizOpps.
SpaceX Amended Complaint, ECF Doc. 53, ¶ 47 (Am. Compl.).

May 31, 2011 SpaceX responds to the RFI by providing a statement of capabilities.
SpaceX Pre-Administrative Record Chronology, ECF No. 67-1, ¶ 22.

July–Oct. 2011 SpaceX provides additional information regarding its capabilities in response to questions from the Air Force. *Id.* ¶ 23.

Sept. 2011 GAO issues report (GAO-11-641) discussing new EELV acquisition strategy for a “block buy” of eight launch vehicles for a 5-year period. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-641, EVOLVED EXPENDABLE LAUNCH VEHICLE, DOD NEEDS TO ENSURE NEW ACQUISITION STRATEGY IS BASED ON SUFFICIENT INFORMATION 6 (Sept. 2011), App. 146, *available at* <http://www.gao.gov/new.items/d11641.pdf>. The GAO writes, “Based on a memorandum of understanding, signed on March 10, 2011, between the Air Force, NRO and NASA, the new EELV acquisition strategy will most likely commit the Air Force and NRO to buy each year a block of eight launch vehicles—or more specifically eight common booster cores—and commit to doing so for a 5-year period, instead of buying one launch vehicle at a time as is currently done.” *Id.*

Oct. 27, 2011 In coordination with the National Aeronautics and Space Administration and the National Reconnaissance Office, the Air Force publishes the “New Entrant Certification Guide,” which sets out technical and experience

requirements that each new EELV-class entrant must satisfy. Am. Compl. ¶ 59; U.S. AIR FORCE, UNITED STATES AIR FORCE LAUNCH SERVICES NEW ENTRANT CERTIFICATION GUIDE (Oct. 27, 2012), App. 471-540. The Guide contains several certification options that new entrants can choose from. Some options require more flights with less stringent government review of flight data, while other options require less flights, but more stringent government review of flight data. *Id.*, App. 500-503. The certification process is intended to assist the Government “in determining the capability of prospective contractors in accordance with Federal Acquisition Regulation 9.1 (“Responsible Prospective Contractors”).” *Id.*, App. 486.

Nov. 8, 2011 The Air Force grants SpaceX access to the New Entrant Data Library, a secure, central repository of relevant launch documents. Appendix in Support of Defendant’s Motion to Dismiss Portions of Plaintiff’s Complaint, ECF Doc. 75-1, Appendix A, Declaration of Tracy E. Stroud, ¶ 4 (Stroud Decl.); *Id.*, Appendix B, Declaration of Arnold Nowinski ¶¶ 4-5 (Nowinski Decl.).

Nov. 24, 2011 Air Force executes “Acquisition Strategy Document for the Evolved Expendable Launch Vehicle (EELV) Program: FY2013-FY2017 Acquisition.” ACQUISITION STRATEGY DOCUMENT FOR THE EVOLVED EXPENDABLE LAUNCH VEHICLE (EELV) PROGRAM: FY2013-FY2017 ACQUISITION (Nov. 24, 2011), AR 1-36. The Air Force writes, “[I]f the baseline core commitment or more is required to launch the manifest listed

in the National Launch Forecast between FY15 and FY19, then *the government will order at least this baseline core commitment from ULA* to support launch requirements at a minimum annual rate per year.” *Id.* at 17, AR 17 (emphasis added). Regarding the potential for competition, the Air Force writes, “[o]nce a New Entrant completes the certification process, the company will be able to compete for EELV-class missions *above the baseline core commitment* and subsequent Phases.” *Id.* at 21, AR 22 (emphasis added).

- Jan. 27, 2012 Justification and Approval (J&A) for EELV Phase 1 Contract Award to ULS posted on FedBizOpps. Evolved Expendable Launch Vehicle J&A, posted Jan. 27, 2012, AR 46-52. The Air Force writes, “This class Justification and Authorization (J&A) is to authorize sole-source award of contracts to United Launch Services, LLC (ULS) to satisfy EELV-class National Security Space (NSS) *launch requirements from Fiscal Year (FY) 2012 to FY17.*” AR 47. (emphasis added)
- Feb. 2012 Department of Defense publicly issues its Fiscal Year 2013 budget submission, including specific reference to the EELV Acquisition Strategy approved in the November 2011 Acquisition Strategy Document. Department of Defense Fiscal Year (FY) 2013 President’s Budget Submission, Air Force Justification Book, Volume 1, Feb. 2012, App. 174-455. The Department of Defense writes that it is “planning a requirements contract taking advantage of setting a minimum quantity at a steady production rate.” *Id.* at 1-218, App. 419.

Feb. 7, 2012 SpaceX submits its “Statement of Intent” to seek certification for its Falcon 9 v1.1 launch vehicle. SpaceX Chronology, ECF No. 67-1, ¶ 38.

March 23, 2012 Air Force issues Request For Proposal to ULS for sole-source *requirements contract* for up to eight (8) EELV launch vehicle cores per year and EELV launch capability through FY 2019 (with launch cores to be ordered through FY 2017) (“RFP”). Transmittal Memo. from Tracy E. Stroud, Contracting Officer, to ULS Re: EELV Government Fiscal Year (GY) 2013 Phase 1 Buy, Request for Proposal, 1, (Mar. 23, 2012), AR 53-56. The RFP requires a response within 60 - 90 days. *Id.*, AR 53.

Apr. 13, 2012 The Air Force posts a redacted copy of the RFP, including the model contract, in the New Entrant Data Library for SpaceX and other potential new entrants to review. ECF Doc. 75-1, Stroud Decl. ¶¶ 9-; *Id.*, Nowinski Decl. ¶¶ 6-7. No prospective launch service providers object to the RFP’s scope or any of its terms.

Nov. 27, 2012 Under Secretary of Defense Frank Kendall issues Acquisition Decision Memorandum (“ADM”), authorizing “the Air Force to negotiate with United Launch Alliance (ULA) based on an acquisition strategy that plans to procure up to **36 EELV cores across 5 years** (FY 2013 – FY 2017) from ULA and up to an **additional** 14 cores from ULA under the Variation in Quantity and configuration provisions if competition is not viable at time of need.” Am. Compl. ¶ 51; Memorandum from Frank Kendall, Under Secretary of Defense, Acquisition, Technology and Logistics to the Secretary of the Air Force, Director, Cost Assessment and Program

Evaluation regarding Evolved Expendable Launch Vehicle Program Quantity Buy Decision Acquisition Decision Memorandum (Nov. 27, 2012), AR 280-81. The ADM indicates that these *additional* cores (up to 14) would be “available for competition if emerging new entrants have the required launch capability on a schedule to support all or some of these launches.” *Id.* at 2, AR 281.

Dec. 5, 2012 The Air Force awards two low risk launch missions under the separate OSP-3 launch program, without competition from ULS, to help SpaceX develop launch capability. Am. Compl. ¶ 41.

Feb. 7, 2013 In a letter to Congressional Committees regarding the Launch Services New Entrant Certification Guide, GAO states: “Launch vehicle certification is necessary to ensure that only proven, reliable launch vehicles will be used to launch government satellites.” U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-641, EVOLVED EXPENDABLE LAUNCH VEHICLE, DOD NEEDS TO ENSURE NEW ACQUISITION STRATEGY IS BASED ON SUFFICIENT INFORMATION 6 (Sept. 2011), App. 146.

Apr. 25, 2013 Commanding General, U.S. Air Force Space Command, William Shelton, provides testimony before that U.S. House of Representatives, Committee on Armed Services, Subcommittee on Strategic Forces, that the “quantity *commitment of 36 cores* (supporting all National Security Space programs) allows ULA, the current EELV provider, to purchase economic order-type quantities of critical parts and components, run production lines more efficiently and reduce non-recurring engineering costs. The strategy

sets aside *up to* 14 cores (based on physical capability of new entrant expected performance), *in addition to the above commitment*, for competition as early as FY15 if new entrants become certified.” (Emphasis added.) *National Defense Authorization Act for Fiscal Year 2014 and Oversight of Previously Authorized Programs: Hearing Before the H. Comm. on Armed Services, Subcomm. on Strategic Forces*, 113th Cong. 89 (2013), App. 93.

Apr. 25, 2013 Ms. Betty Sapp, Director, National Reconnaissance Office, presents a written Statement for the Record to the U.S. House of Representatives, Committee on Armed Services, Subcommittee on Strategic Forces, which provides that under the EELV acquisition strategy, “the NRO and the Air Force *will procure 36 EELV booster cores over 5 years from the heritage Atlas and Delta lines*, while also reserving up to 14 booster procurements for competition among all certified launch vehicle providers.” *Id.* at 56, App. 60 (emphasis added).

June 26, 2013 Air Force awards Contract No. FA8811-13-C-003 to ULS. Contract No. FA8811-13-C-0003, AR 297-324. The contract commits the Air Force to order its requirements for launch services, up to 35 launch vehicle cores over a five year period, from ULS. The contract award was publicly reported on the Department of Defense’s website. Press Release, U.S. Department of Defense, Contracts for June 26, 2013–Air Force, App. 456-57, available at <http://www.defense.gov/contracts/contract.aspx?contractid=5073>

- Sept. 10, 2013 SpaceX performs first launch required under the New Entrant Certification Guide for EELV-class certification. Press Release, Air Force, SpaceX Launch Counts Towards EELV Certification (Feb. 25, 2014), App. 541. It also marks the first launch of SpaceX's Falcon 9v1.1 launch vehicle, which is the vehicle that SpaceX has submitted for certification. *Id.*
- Dec. 18, 2013 Air Force and ULS sign modification to Contract No. FA8811-13-C-003 to definitize the EELV contract. Contract Modification No. PZ0001, AR 329-508.
- Dec. 19, 2013 “Contract Notice: EELV FY13-17 Launch Vehicle Production Services and annual options for associated Launch Capability FY 15-19” is publicly posted to FedBizOpps. U.S. Air Force Award Notice, FA8811-13-C-0003-PZ0001, App. 458-460, *available at* <https://www.fbo.gov/spg/USAF/AFSC/SMCSMSC/Awards/FA8811-13-C-0003-PZ0001.html>. The Air Force writes that the launch vehicle cores “shall be ordered under a Requirements-like contract structure based on established annual maximums over the 5-year ordering period.” *Id.*
- Feb. 25, 2014 Air Force publicly announces that SpaceX’s first (September 2013) EELV-class certification launch will count toward certification. Press Release, U.S. Air Force, SpaceX Launch Counts Towards EELV Certification (Feb. 25, 2014), App. 541.
- April 3, 2014 Gil I. Klinger, Deputy Assistant Secretary of Defense, in a written statement submitted to the U.S. House of Representatives, Committee on Armed Services, Subcommittee on Strategic Forces, states: “The

incredible success of 68 successful operational EELV missions since 2002 and 99 National Security missions since 1998 came after a string of failures in the late 1990's that caused us to refocus on mission assurance. The cost of a single launch failure, especially one with a multibillion dollar satellite on board, can very quickly overwhelm any savings achieved by aggressive acquisition strategies." Statement of Gil I. Klinger, Deputy Assistant Secretary of Defense, Hearing Before the H. Comm. on Armed Services, Subcomm. on Strategic Forces (Apr. 3, 2014), at 15, App. 625.

April 9, 2014 Elon Musk makes statement to the Senate Committee on Appropriations that SpaceX can support only "approximately 60 percent of the EELV launches planned through 2019." SpaceX Reponses to Questions for the Record Posed by United Launch Alliance, National Security Space Launch Program, Hearing Before the S. Comm. on Appropriations, Defense Subcomm. (April 9, 2014), App. 464.

Apr. 28, 2014 SpaceX files complaint with this Court.

May 2014 Press reports indicate that the Air Force is spending approximately \$60 million and using as many as 100 personnel to assist SpaceX with EELV certification. Tony Capaccio, *Air Force Spending \$60 Million for SpaceX U.S. Launches*, Bloomberg, May 15, 2014, App. 468-470, <http://www.bloomberg.com/news/2014-05-15/u-s-air-force-busting-butt-to-certify-musk-s-spacex.html>